



BOARD OF BEHAVIORAL SCIENCES
1625 North Market Blvd., Suite S200, Sacramento, CA 95834
Telephone (916) 574-7830
TDD (916) 322-1700
Website Address: <http://www.bbs.ca.gov>



MEETING NOTICE

Consumer Protection Committee

April 17, 2006

9:00 a.m. – 12:00 p.m.

Radisson Hotel

Laguna Room

6225 W. Century Blvd

Los Angeles, CA 90045

- I. Introductions
- II. Review and Approve January 17, 2006 Consumer Protection Committee Meeting Minutes
- III. Strategic Plan Goal #3 – Promote Higher Professional Standards Through Rigorous Enforcement and Public Policy Changes - Report on Progress
 - A. Objective 3.1 -- Complete Revisions for Continuing Education Laws by December 31, 2006.
 - B. Objective 3.2 -- Establish a Standard to Measure Quality of Continuing Education by June 30, 2007.
 - C. Objective 3.3 -- Complete 12 Substantive Changes in Laws and Regulations by January 1, 2008.
 - D. Objective 3.4 – Advocate for Five Laws that Protect the Privacy of Client/Therapist Relationships by December 31, 2010.
 - E. Objective 3.5 – Provide Four Educational Opportunities for Division of Investigation (DOI) and The Office of the Attorney General (AG) Regarding the Board of Behavioral Sciences (BBS) and It's Licensees by June 30, 2008
 - F. Objective 3.6 – Reduce time in which BBS cases are investigated and processed by DOI and AG by 30% by June 30, 2010.
 - G. Objective 3.7 – Complete Annual Review of Examination Program and Report the Results at a Public Meeting
- IV. Discuss the Definition of What Constitutes Online Continuing Education
- V. Update on Supervision Survey for Marriage and Family Therapists (MFT) Interns and Associate Clinical Social Workers (ACSW)
- VI. Discussion and Possible Action on Proposal to Allow Supervision of MFT Interns and ACSW Registrants Via Video Conferencing

- VII. Review and Discuss the Scope of Unprofessional Conduct Statutes and Regulations
- VIII. Review Enforcement Program
 - Cost Recovery
 - Notification of Subsequent Arrests
- IX. Review Enforcement Authority Available to the Board for Urgent/Emergent Cases
 - Penal Code Section 23
 - Interim Suspension Order (ISO)
 - Temporary Restraining Order (TRO)
- X. Discuss Agenda Topics for Future Committee Meetings

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Items will be considered in the order listed. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF
BEHAVIORAL SCIENCES WEBSITE AT www.bbs.ca.gov

NOTICE: The meeting facilities are accessible to persons with disabilities. Please make requests for accommodations to the attention of Mona Maggio at the Board of Behavioral Sciences, 1625 North Market Blvd., Suite S200, Sacramento, CA 95834, Telephone (916) 574-7841 no later than one week prior to the meeting. If you have any questions please contact the Board at (916) 574-7830.

**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Consumer Protection Committee

Date: April 7, 2006

From: Mona C. Maggio
Assistant Executive Officer

Telephone: (916) 574-7841

Subject: Agenda Item I - Introduction

The Consumer Protection Committee was formed as part of a reorganization of the Board's committees. Each of the Board committees now has express responsibility for overseeing specific goals in the strategic plan recently adopted by the board as well as a general jurisdiction.

This Committee is responsible for Goal #3 in the Strategic Plan – Promote Higher Professional Standards Through Rigorous Enforcement and Public Policy Changes – Report on Progress

Committee Chair, Howard Stein will introduce Communication Committee Members and ask audience members to introduce themselves.

The Board's committees are composed as follows:

Consumer Protection Committee

Chair - Howard Stein
Judi Johnson
Bob Gerst

Communications Committee

Chair – Karen Pines
Joanie Walmsley
Peter Manoleas

Policy and Advocacy Committee

Chair - Bob Gerst
Karen Pines
Ian Russ
Peter Manoleas

Budget and Efficiency Committee

Chair – Victor Law
Donna DiGiorgio

Blank Page

**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Consumer Protection Committee

Date: April 7, 2006

From: Mona C. Maggio
Assistant Executive Officer

Telephone: (916) 574-7841

**Subject: Agenda Item II - Review and Approve January 17, 2006 Consumer Protection
Committee Meeting Minutes**

The Committee is asked to approve the minutes of the January 17, 2006 Consumer Protection Committee Meeting. (Attachment A)



BOARD OF BEHAVIORAL SCIENCES
1625 North Market Blvd., Suite S200, Sacramento, CA 95834
Telephone (916) 574-7830
TDD (916) 322-1700
Website Address: <http://www.bbs.ca.gov>



Meeting Minutes
Consumer Protection Committee
January 17, 2006

Junipero Serra State Building
320 W. Fourth Street
7th Floor Conference Room
Los Angeles, CA 90013

I. Introductions

Meeting called to order at 10:01 a.m., and a quorum was established.

Committee Members Present:

Howard Stein, Chair
Bob Gerst
Judy Johnson

Staff Present:

Paul Riches, Executive Officer
Mona Maggio, Assistant Executive Officer
Christy Berger, Legislation Analyst

Mr. Stein applauded the commencement of the new committee process.

II. Strategic Plan Goal #3 – Promote Higher Professional Standards Through Rigorous Enforcement and Public Policy Changes - Report on Progress

Ms. Maggio provided a summary of the strategic objectives and progress made for each objective.

A. Objective 3.1 -- Complete Revisions for Continuing Education Laws by December 31, 2006.

The Board of Behavioral Sciences (Board) approved regulations that would allow the issuance of citations and fines to continuing education providers. This matter is currently in process.

B. Objective 3.2 -- Establish a Standard to Measure Quality of Continuing Education by June 30, 2007.

The Board's strategic plan identifies the need to ensure high professional standards for Marriage and Family Therapists (MFT) and Licensed Clinical Social Workers (LCSW). To meet this objective, the Board must develop a way to measure the quality of continuing education (CE) courses and establish a minimum standard that all CE courses must meet to be or continue to be approved as a Board provider. Staff has identified the basic tasks to begin researching this objective and identified six entities (BAR Association, California Association of Marriage and Family Therapists (CAMFT), California Society for Clinical Social

Work (CSCSW), National Association of Social Workers (NASW), UC Davis Continuing Medical Education, American Association of State Social Work Boards (AASWB) and the Department of Consumer Affairs (DCA) boards and bureaus) for CE data collection. Staff will bring draft CE recommendations to the Committee at a future meeting for its input before finalizing and presenting to the Board for consideration.

C. Objective 3.3 -- Complete 12 Substantive Changes in Laws and Regulations by January 1, 2008.

The Board has recently approved a number of substantive changes to the Licensed Education Psychologist (LEP) law, including: 1) continuing education; 2) scope of practice; 3) licensing requirements, and 4) unprofessional conduct. The Senate Business, Professions and Economic Interest Committee agreed to sponsor the bill. The Board expects the bill to be introduced in early 2006 and if passed, to take effect January 1, 2007.

The Board has also approved several substantive regulatory changes. These changes are currently in process and expected to be complete by mid-2006: 1) citation and fine – increase maximum fine to \$5,000 for specified violations; 2) citation and fine of continuing education providers, and 3) delegation to the Executive Officer to compel psychiatric evaluations.

D. Objective 3.4 -- Advocate for Five Laws that Protect the Privacy of Client/Therapist Relationships by December 31, 2010.

Board staff will continue to monitor legislation and identify any that has the potential to protect the privacy of client/therapist relationships beginning with the 2006 legislative season. Any such legislation will be analyzed and brought before the Policy and Advocacy Committee for discussion and recommendation to the Board whether to support the bill and when needed, suggest amendments.

E. Objective 3.5 -- Provide Four Educational Opportunities for Division of Investigation (DOI) and the Office of the Attorney General (AG) Regarding the Board of Behavioral Sciences and its Licensees by June 30, 2008.

Paul Riches and Ms. Maggio met with Kathryn Door, Chief and Bill Holland, Deputy Chief of DOI in November and December 2005 to discuss the investigation process, timelines and how Board staff can assist DOI in expediting cases. Chief Door shared that the Board of Registered Nursing (BRN) held a training session for DOI Investigators and Deputy Attorneys General in Southern California in Fall 2005. An additional training will be held in Sacramento in January 2006. The Board's Enforcement Staff will attend the BRN training to gain insight in developing its training program.

Bob Gerst suggested training for the Board's Expert Witnesses in case review, report writing and testifying at administrative hearing. He suggested a private attorney might be helpful in assisting with the training. Staff agreed training for Expert Witnesses would be beneficial and will discuss this suggestion with the Enforcement staff.

Mr. Gerst asked staff to provide a summary of pending enforcement cases. Mr. Riches shared that the Board members are provided with enforcement statistics at each meeting; however, disclosure of the respondent's name and license number cannot be revealed until the case is adjudicated, as respondents have due process. Once the matter is final the decision is posted to the Board's website and is published in the Board's newsletter.

Mr. Gerst requested the statistical report include: 1) categorize the nature of the violations; 2) number of violations in each category; 3) number of cases at DOI; 4) number of cases pending at AG, and 5) status of cases after proposed decision, i.e., probation, revocation, writ of mandate.

Mr. Janlee Wong representing NASW and Mary Riemersma representing CAMFT advised of internal mediation and ethics processes used by the associations. The Committee asked if the associations report to the Board when a complaint has been filed against one of its members, or do associations try to resolve the complaint without referring to the Board for formal action. The Committee shared its concern that the associations might be protecting a member who violates state laws. Ms. Riemersma advised the Committee of the options used by CAMFT, (legal action, forward complaint to Board, or Ethics Committee resolution). CAMFT does not use mediation but ethics judgments.

Ms. Riemersma stated that 65% - 70% of MFTs are CAMFT members. CAMFT does not release the names of its members who are disciplined; however, if the licensee fails to adhere to the imposed CAMFT discipline, the Board is notified. Mr. Wong stated the names of members disciplined by NASW are published in its newsletter. Mr. Wong noted that when the complaint process is discussed with complainants, most choose to take action through the Board because the complainant often wants the licensee to lose his/her license.

Judy Johnson asked if the Board advises licensees to join CAMFT. Per Ms. Riemersma, Board staff does indirectly in that questions staff cannot answer are referred to CAMFT.

Ms. Johnson shared there is importance of membership in an association. Mr. Riches stated that because there is more than one organization; the Board will not steer licensees to a particular association though in a broad manner licensees are encouraged to join an association as they provide many services to licensees.

For the April 17, 2006 meeting, the Committee agreed to review Business and Professions Code (BPC) Section 4982, Unprofessional Conduct (MFT); BPC section 4998.1 Unprofessional Conduct (LCSW); and BPC section 4986.70, Refusal to Issue, or Suspension or Revocation of License; Unprofessional Conduct (LEP) to possibly recommend expanding the definition of unprofessional conduct. The Committee asked staff to provide information regarding other boards' actions on Rules of Professional Conduct; and provided a copy of NASW's Code of Ethics and CAMFT's Code of Ethical Standards for the Committee's consideration.

- F. Objective 3.6 -- Reduce time in which BBS cases are investigated and processed by DOI and AG by 30% by June 30, 2010.

On December 20, 2005, Mr. Riches and Ms. Maggio met with DOI and the Department of Consumer Affairs (DCA's) budget team to discuss the DOI billing process and the difficulty DOI is having in recruiting investigators. DOI currently has 15 vacancies, which is hindering its ability to process investigations in a timely manner. Staff will continue to monitor this situation and report to the Committee.

- G. Objective 3.7 -- Complete Annual Review of Examination Program and Report the Results at a Public Meeting.

Staff met with the Office of Examination Resources (OER) on January 10, 2006 to discuss the Board's current examination program, pass rates, examination development workshops and the current examination vendor Thompson/Prometric. Ms. Maggio announced that

Tracy Montez, Ph.D., Chief of OER and Linda Hooper, Ph.D. will present an overview of the examination process for Board Members and staff during a closed session Board Meeting on January 27, 2006. Ms. Hooper will make a presentation and facilitate discussion of the Board's licensing examination program at the February 16, 2006 Board Meeting.

III. Discuss and Possibly Investigate Feasibility of Tiered, Multiple or Specialty Social Work Licensure as Practiced in Other States

Christy Berger provided an overview of models of licensure for social work in other states. She stated most have four levels of licensure (Licensed Baccalaureate Social Worker, Licensed Master Social Worker, Licensed Clinical Social Worker and Social Worker). Ms. Berger referred the Committee to the chart she prepared which identified the state, type of licenses issued, education and experience requirements for each license and the model law from the Association of Social Work Boards (ASWB).

Mr. Riches informed the Committee that this issue came up at the Social Work Forums held in Summer 2005. Because the LCSW is the only license issued in California, it's what social work candidates obtain even if they do not plan to work in independent practice. Mr. Riches stated this is recognition/credentialing issue, not a public harm issue.

Ms. Riemersma questioned why the Board is taking on an issue if no public harm has been identified. Why aren't schools or associations taking the lead and seeking legislation?

Charlene Gonzalez, representing the University of Southern California (USC) Social Work Program, identified two issues: 1) scope of practice is broader than the fifty-minute psychotherapy session, and 2) the central issue is title protection for social work practice, non-licensurees using the title "social worker".

Mr. Wong said the issue is consumer protection. The LCSW was created to balance competing social work interests for and against licensure. Independent private practice is the highest risk category. Mr. Wong believes that there is substantial harm to the public by unlicensed social workers who mainly work in county entities. Counties do take disciplinary action against employees when complaints are filed but little prevention is ongoing. Additionally, though county facilities are exempt from the licensure requirement, most counties require employees to be license-ready or licensed. Discussion ensued on whether this requirement was for reimbursement of insurance funds or a child welfare issue.

Mr. Riches asked if licensing is the right remedy for this issue. Ms. Gonzalez stated employers need to set standards; this is not a licensing issue.

Mr. Wong said there are four areas that should be considered for possible multi-level licensure:

1. Child Welfare - adoptions/foster care/emergency services/abuse
2. Macro Level Social Work. Should profession consider credentialing program?
3. Aging - conservators/elder abuse/elder care
4. Alcohol/Drug Counselors - Department of Alcohol and Drug Programs (ADP) recently published requirements - counselors are seeking licensure.

The Committee directed staff to conduct more research specifically on the child welfare and elder care areas with reference to other states' activities and report back at a future meeting.

IV. Update on Supervision Survey for Marriage and Family Therapists (MFT) Interns and Associate Clinical Social Workers (ACSW)

Ms. Maggio stated that in 2005 the Board addressed concerns regarding the quality and nature of candidates' supervision experience. To gain a better understanding of supervised experience and preparedness for licensure, staff developed and distributed a survey to Marriage and Family Therapist Interns (IMF) and Social Work Associates (ASW) candidates to obtain this basic information. Staff began distributing the survey in May 2005 and as of December 20, 2005; the Board received a response rate of 44% from IMFs and a 45% response rate from ASWs.

An update on the Supervision Survey responses will be provided at the February 2006 Board Meeting.

V. Discuss and Possibly Consider Allowing MFT Supervision Via Video Conferencing

Ms. Maggio stated that CAMFT, on behalf of one of its members, asked the Board to explore the possibility of allowing supervisors to conduct required one-on-one supervision sessions with interns via video conferencing.

To facilitate this discussion staff provided a review of the development of MFT supervision laws and the reasons behind those laws, an overview of pertinent American Association for Marital and Family Therapy (AAMFT) and Board of Psychology supervision requirements.

Ms. Riemersma shared that this request comes from an MFT who provides a significant amount of supervision, and who is aware that appropriate placements for MFT interns and trainees are becoming more difficult to find, largely because many agencies are reluctant to provide the necessary quantity of supervision. Additionally, due to geographical limitations, most supervisees do not have access to a choice of supervision types, theoretical orientations, or experiences.

Mr. Gerst stated this might be useful in a very narrow application. Ms. Johnson voiced this is a valuable tool for good supervisors but should not be the main mode of supervision.

Ms. Riemersma indicated that this should not apply to private practice, but only to public practice or agency settings. Video conferencing would be appropriate for remote/rural settings, intermittent use only (10%), and limited to post degree hours. The Board would need to define regulations to outline acceptable practice.

Mr. Wong voiced the following issues:

1. Confidentiality issues as a client's file is reviewed during supervision session.
2. Personal relationship issues - nonverbal communication is impaired.
3. Remote supervision allows supervision to ignore or be ignorant of the social circumstances for the particular community at hand. Supervisors in large cities (Los Angeles) may not understand the circumstances of supervisees in rural areas.
4. Precludes joint sessions between client, supervisee and supervisor.

Carla Cross stated that video conferencing would provide access to a supervisor who has a particular specialty that is not available at the locale or agency.

The Committee directed staff to bring back a specific proposal for limited use of video conferencing for remote locations, and specialty access. The proposal would apply to both LCSWs and MFTs.

VI. Discuss and Possibly Recommend BBS Sponsor Legislation for Fictitious Business Names for Licensed Clinical Social Workers

Ms. Maggio reported that in October 2005 the Board received a consumer complaint that was initially opened as “unlicensed activity”; however after further investigation staff discovered the individual is a LCSW but uses a fictitious business name when seeing clients.

BPC section 4980.46, Fictitious Business Names, addresses fictitious business names for MFTs in private practice; however, there is not a similar law for LCSWs in private practice. BPC section 4998.2, Name, only addresses fictitious business names for LCSW corporations.

Staff recommended the Committee propose to the Board to consider sponsoring legislation for fictitious business names for LCSWs, mirroring the language used in BPC section 4980.46.

Mr. Wong shared his support for this recommendation and suggested licensees not only post their license but also should be required to actually show their license to patients at the commencement of the relationship.

The Committee moved 3 – 0 to recommend the Board to sponsor legislation for Fictitious Business Names for Licensed Clinical Social Workers.

This matter will be discussed at the February 16, 2006 Board Meeting.

VII. Discuss Title 16, Division 18, California Code of Regulations (CCR) Section 1833.1, Requirements for Supervisors

Ms. Maggio stated that in November 2005 staff denied a portion of a MFT applicant's supervised clinical hours as the supervisor did not meet the requirement to be licensed in California for two years as stated in BPC section 4980.40 (f), Qualifications, and CCR section 1833.1, Requirements for Supervisors.

Though California law does not provide for the Board to grant an exception to the supervisor requirements, this issue was brought before the Committee per the specific request of the supervisor.

Ms. Riemersma and Ms. Cross both strongly opposed any exceptions to be granted.

The Committee moved 3 – 0 not to grant an exception to the supervisor requirements.

VIII. Select Dates for Future Committee Meetings

The Committee established the following dates for future meetings:

April 17, 2006

June 21, 2006

September 20, 2006

January 10, 2007

The meeting adjourned at 1:32 p.m.

State of California
Board of Behavioral Sciences

Memorandum

To: Consumer Protection Committee

Date: April 11, 2006

From: Mona C. Maggio
Assistant Executive Officer

Telephone: (916) 574-7841

Subject: **Agenda Item III - Strategic Plan Goal #3 – Promote Higher Professional Standards Through Rigorous Enforcement and Public Policy Changes – Report on Progress**

Goal #3 – Promote higher professional standards through rigorous enforcement and public policy changes.

Objective 3.1 -- Complete Revisions for Continuing Education Laws by December 31, 2006.

Background

The Board's strategic plan identifies the need to "Complete Revisions for Continuing Education Laws by December 31, 2006."

Update

The Board approved regulations that would allow the issuance of citations and fines to continuing education providers.

Staff is waiting to proceed with this regulation until the proposed regulation to increase maximum fine to \$5,000 for specified violations is complete.

Board staff will continue to monitor changes regarding the continuing education law and will bring any issues to the attention of the Policy and Advocacy Committee.

Objective 3.2 -- Establish a Standard to Measure Quality of Continuing Education by June 30, 2007.

Background

The Board's strategic plan identifies the need to ensure high professional standards for Marriage and Family Therapists (MFT) and Licensed Clinical Social Workers (LCSW). In an effort to meet this objective, the board must develop a way to measure the quality of continuing education (CE) courses and thereby establish a minimum standard that all CE courses must meet to be or continue to be approved as a Board of Behavioral Sciences (BBS) approved provider.

Update

Staff has identified the basic tasks to begin researching this objective. Staff is completing the analysis of the data collection from other six identified entities (BAR Association, California Association of Marriage and Family Therapists (CAMFT), California Society for Clinical Social Work (CSCSW), National Association of Social Workers (NASW), UC Davis Continuing Medical Education, American Association of State Social work Boards (AASWB) and DCA boards and bureaus). Team members will meet to determine methodologies to measure to the quality of CE courses and minimum uniform standards.

Objective 3.3 --

Complete 12 Substantive Changes in Laws and Regulations by January 1, 2008.

Background

The Board's strategic plan identifies the need to "Complete 12 substantive changes in laws and regulations by January 1, 2008."

Update

The Board has recently approved a number of substantive changes to the Licensed Educational Psychologist law, including:

- Continuing education
- Scope of practice
- Licensing requirements
- Unprofessional conduct

An author has been found to introduce these changes in legislation. We expect the bill to be introduced in early 2006 and if passed, to take effect January 1, 2007.

The Board has also approved several substantive regulatory changes, currently in process and expected to be complete by mid-2006:

- Citation and fine – Increase maximum fine to \$5,000 for specified violations *
- Citation and fine of continuing education providers
- Delegation to Executive Officer ability to compel psychiatric evaluation *

* Currently awaiting Department of Consumer Affairs (DCA) approval

Objective 3.4 --

Advocate for Five Laws that Protect the Privacy of Client/Therapist Relationships by December 31, 2010.

Background

The Board's strategic plan identifies the need to "Advocate for five laws that protects the privacy of client/therapist relationships by December 2010."

Update

Assembly Bill 3013 was introduced on February 24, 2006, Author Nunez, Sponsor CAMFT – Subject Medical Information: Disclosures.

(Attached) The Policy and Advocacy Committee will discuss this item on April 19, 2006.

Board staff will monitor legislation and identify any that has the potential to protect the privacy of client/therapist relationships beginning with the 2006 legislative season. Any such legislation will be analyzed and brought before the Policy and Advocacy Committee who will make a recommendation to the Board whether to support the bill and when needed, suggest amendments.

Objective 3.5 --

Provide Four Educational Opportunities for Division of Investigation (DOI) and The Office of the Attorney General (AG) Regarding the Board of Behavioral Sciences (BBS) and It's Licensees by June 30, 2008.

Background

Team members identified the educational opportunities as training for DOI investigators and the Deputy Attorneys General regarding the Board's scope of authority, licensee scope of practice and the necessary requirements to conduct investigations and prosecute cases. The training will be conducted by the Executive Officer, representatives from the Department of Justice and the Board's Enforcement Unit.

Current Status:

Team members have received training material samples from other boards to assist in developing the training program for DOI investigators and the Deputy Attorneys General.

Objective 3.6 --

Reduce time in which BBS cases are investigated and processed by DOI and AG by 30% by June 30, 2010.

Background

Cases sent to DOI for formal investigation take an average of 9 months to one year for completion. The Administrative Hearing process averages another year for a proposed decision to be rendered and come before the Board. It is the goal of this objective to shorten the processing time for investigation and prosecution of cases to meet the Board's mandate to protect the public health, safety and welfare.

Status

On December 20, 2005, the EO and AEO met with DOI and the DCA budget team to discuss DOI billing process and the difficulty DOI is having in the recruitment of investigators. DOI currently has 15 vacancies, which is hindering its ability to process investigations in a timely manner. The EO and AEO met with the Chief and Deputy Chief of DOI on December 27, 2005 to further discuss the processing time for BBS cases, DOI workload and the BBS training program for DOI and the AG.

Ms. Maggio met with Bill Holland, Deputy Chief of DOI in early April to discuss caseload and processing times. Mr. Holland reported that four new investigators would be on board effective April 16, 2006; however, four investigators are leaving due to retirement.

Staff will continue to monitor the processing times of both agencies. Staff are in the process of creating a training manual and PowerPoint presentation for the training session to be held in late Fall 2006.

Objective 3.7 --

Complete Annual Review of Examination Program and report the Results at a Public Meeting.

Background/Status

Staff has identified this objective as being met.

- Staff met with the Office of Examination Resources (OER) on January 10, 2006 to discuss the Board's current examination program, pass rates, examination development workshops and the examination vendor Thompson/Prometric.
- On January 27, 2006, Tracy Montez PhD, Chief of OER and Linda Hooper, PhD, Personnel Selection Specialist at OER facilitated a discussion and overview of the Board's licensing examinations for MFTs, LCSWs and LEPs during a Closed Session Board Meeting.
- On February 16, 2006 Ms. Hooper facilitated a presentation on and discussion of Board's Licensing Examination Program for the public.

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 3013 **VERSION:** INTRODUCED FEBRUARY 24, 2006

AUTHOR: NUNEZ **SPONSOR:** CAMFT

RECOMMENDED POSITION: SUPPORT

SUBJECT: MEDICAL INFORMATION: DISCLOSURES

Existing Law:

- 1) Defines "provider of health care" as any person licensed or certified to provide health care; any clinic, health dispensary, or licensed health facility. (Civil Code § 56.05 (j))
- 2) Defines "medical information" as any individually identifiable information, in electronic or physical form, derived from a provider of health care regarding a patient's medical history, mental or physical condition, or treatment. (Civil Code § 56.05 (g))
- 3) Permits a provider of health care to release at its discretion, the following information regarding a specific patient upon an inquiry, unless there is a specific written request by the patient to the contrary: (Civil Code § 56.16)
 - The patient's name and address
 - The patient's age and sex
 - A **general** description of the reason for treatment (whether an injury, a burn, poisoning or some unrelated condition)
 - The **general** nature of the injury, burn, poisoning or other condition
 - The **general** condition of the patient
 - Any information that is not medical information
- 4) Prohibits a provider of health care from disclosing medical information regarding a patient without first obtaining an authorization, except in certain circumstances. (Civil Code § 56.10)
- 5) Prohibits a provider of health care from releasing information specifically related to outpatient treatment with a psychotherapist to a person or entity authorized to receive medical information, unless the person or entity requesting that information submits a written request to the patient and health care provider, signed by the person requesting the information. (Civil Code § 56.104(a))
- 6) Permits a health care provider to maintain a directory of individuals in its facility and to disclose the following protected health information for directory purposes to those who ask for the individual by name, unless an objection is expressed by the patient: (45 CFR § 160.202(a))
 - The individual's name
 - The individual's location in the covered health care provider's facility
 - The individual's condition described in general terms that does not communicate specific medical information about the individual

- The individual's religious affiliation (only to members of the clergy)
- 7) Requires a health care provider to inform an individual of the protected health information that it may include in a directory and the persons to whom it may disclose such information and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures; or in an emergency, as soon as it becomes practicable to do so. (45 CFR § 160.202(a))
 - 8) Permits a covered health care provider to use or disclose some or all of the protected health information for the facility's directory if the opportunity to object to uses or disclosures cannot practicably be provided because of the individual's incapacity or an emergency treatment circumstance, if such disclosure is: (45 CFR § 160.202(a)(3))
 - Consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider; and
 - In the individual's best interest as determined by the covered health care provider, in the exercise of professional judgment.

This Bill:

- 1) Permits a provider of health care to release at its discretion, the following information regarding a specific patient **when solely related to a physical injury** upon an inquiry, unless there is a specific written request by the patient to the contrary: (Civil Code § 56.16)
 - The patient's name and address
 - The patient's age and sex
 - A general description of the reason for treatment (whether an injury, a burn, poisoning or some unrelated **physical** condition)
 - The general nature of the injury, burn, poisoning or other **physical** condition
 - The general condition of the patient
 - Any information that is not medical information

Comment:

- 1) **Author's Intent.** According to the author, this bill was prompted by a lawsuit against a doctor who disclosed medical information to an employer. The purpose of this bill is to prevent disclosure of mental health information. The office is still considering different approaches to this legislation. According to the sponsor, they are appalled that a mental health professional may lawfully share what is believed to be confidential information about a patient pursuant to the California Civil Code. It is the sponsor's desire to not permit such disclosures by mental health professionals and to limit such disclosures to be made by physical health care providers.
- 2) **HIPAA.** HIPAA preempts most contrary state privacy laws except for cases where state law is more stringent than the HIPAA privacy requirement. In its *HIPAA Preemption Analysis: Confidentiality of Medical Information Act, Civil Code § 56, et. seq.*, The California Office of HIPAA Implementation stated that 45 CFR § 160.202(a) completely preempts California Civil Code § 56.16:

“Although HIPAA also provides for limited disclosures pursuant to specific requests concerning an individual's location and general condition (i.e., “directory purposes”), it is much more restrictive than the California provision and thus completely pre-empts California Law.”

The author believes that many therapists operate on a cash or check basis, so HIPAA does not apply to them. However, once a therapist makes even one electronic transaction (i.e., uses the internet to transmit administrative or insurance information), he or she falls under HIPAA. Studies have shown that the vast majority of therapists accept insurance. A 2004 study of Marriage and Family Therapists showed that 92% accept some form of insurance.¹ However, any therapist who submits insurance claims by mail or fax, or gives the insurance forms to patients to mail or fax, is not covered by HIPAA. See “Existing Law” numbers 6, 7, and 8 of this analysis for pertinent HIPAA rules.

- 3) BBS Strategic Plan.** Even though the HIPAA provisions prevail in the vast majority of cases, this bill would strengthen confidentiality requirements for clients whose therapists who do not fall under HIPAA. It would also help to clarify confidentiality laws for those who do fall under HIPAA, thus helping to ensure such laws are implemented correctly by providers. Therefore, should the Board decide to support this bill, it could help to fulfill Strategic Plan Objective 3.4, “Advocate for five laws that protect the privacy of client/therapist relationships by December 31, 2010.”
- 4) Suggested Amendment.** Section 56.16 makes an erroneous referral to Civil Code Section 56.05, subdivision (c) for the definition of “medical information.” The statute should instead refer to subdivision (g), which provides this definition:

Unless there is a specific written request by the patient to the contrary, nothing in this part shall be construed to prevent a provider, upon an inquiry concerning a specific patient, from releasing at its discretion any of the following information, when related solely to a physical injury suffered by that patient : the patient's name, address, age, and sex; a general description of the reason for treatment (whether an injury, a burn, poisoning, or some unrelated physical condition); the general nature of the injury, burn, poisoning, or other physical condition; the general condition of the patient; and any information that is not medical information as defined in subdivision ~~(e)~~ (g) of Section 56.05.

5) Support and Opposition.

None known at this time.

6) History

2006

Mar. 20	Set for Hearing Apr. 18
Mar. 20	Referred to Com. on HEALTH.
Feb. 27	Read first time.
Feb. 25	From printer. May be heard in committee March 27.
Feb. 24	Introduced. To print.

¹ The Typical California MFT: 2004 CAMFT Member Practice and Demographic Survey.

Blank Page